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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, SEPTEMBER 27, 2002

APPLICATION OF

THE CITY OF BRISTOL

CASE NO. PUC-2002-00126

For a certificate of public  
convenience and necessity to  
provide local exchange  
telecommunications services  
and for interim operating  
authority

ORDER PERMITTING LIMITED INTERIM OPERATING AUTHORITY

On August 5, 2002, the City of Bristol d/b/a Bristol Virginia Utilities Board ("Bristol" or "Applicant") completed an application ("Application") with the State Corporation Commission ("Commission") for a certificate of public convenience and necessity ("certificate") to provide local exchange telecommunications services in the cities of Bristol and Norton and the counties of Washington, Scott, Lee, Wise, Russell, Tazewell, Smyth, and Grayson; and for interim operating authority to operate as a local exchange carrier. The initial Application filed by Bristol was amended on July 8, July 19, July 25, 2002, and completed on August 5, 2002.

On August 12, 2002, Central Telephone Company of Virginia and United Telephone-Southeast, Inc. (jointly, "Sprint"),

filed a Notice of Participation and an objection to Bristol's request for interim operating authority.

On August 16, 2002, the Commission issued an Order for Notice and Comment that, among other things, docketed this case, required public notice of the Application, and denied Bristol interim operating authority.

On August 21, 2002, Bristol filed an answer to the objection of Sprint and, pursuant to Rule 5 VAC 5-20-110 of the Commission's Rules of Practice and Procedure, a Motion for Reconsideration of Interim Authority ("Motion"). Bristol requested that the Commission reconsider its decision concerning interim operating authority. Bristol requested interim authority so that it can continue to service the governmental and commercial customers that were in place prior to the effective date of Senate Bill No. 245 of the 2002 Session of the Virginia General Assembly, as well as any future customers that may desire service. Bristol asserted that its situation is analogous to previous cases where the Commission has granted interim authority when one entity is purchasing the business of another, allowing the new entity to continue serving existing customers.

The Applicant also reiterated that: (1) it is furnishing high-speed data connections to itself, the City of Bristol government offices, and Bristol Virginia City Schools; (2) it

is operating as an internet service provider ("ISP") for approximately 700 dial-up customers and for the governmental agencies noted in (1) above; and (3) it has installed and implemented a LAN-based PBX system for telephone services to the governmental agencies in (1) above. In addition, Bristol explained that it currently is providing commercial telephone service to one entity. Bristol states that all of these customers continue to demand service and rely upon Bristol for such continued service during the pendency of this proceeding.

On August 21, 2002, the Commission issued an Order determining that we would reconsider our decision denying interim operating authority, establishing a schedule for responses to the Motion and for replies to such responses, and modifying the text of the public notice required in this case to remove the reference to the Commission's earlier denial of interim operating authority.

On August 30, 2002, Sprint filed a response to the Motion. Sprint states, among other things, that contrary to Virginia law, Bristol is offering public utility telecommunications services without certification and that statements made in Bristol's Motion indicate that it will not comply with the cross subsidy provisions of Virginia statutes. Sprint asserts that the Commission should deny interim authority because Bristol has not demonstrated compliance with

the cross subsidy and price restrictions in §§ 15.2-2160 and 56-265.4:4 B 4 of the Code of Virginia ("Code"). Sprint contends that the interim authority granted by the Commission in merger situations is not persuasive precedent for granting Bristol interim operating authority.

In addition, Sprint states that the Commission should not grant Bristol interim authority to provide services to any commercial or residential customers. Sprint also objects to Bristol's interim provision of commercial telephone service to the unnamed entity mentioned on page 2 of the Motion. Sprint does not object to Bristol offering high-speed data services at the currently operational locations to the City of Bristol government offices, Bristol Virginia City Schools, and the Bristol Virginia Utilities Board. Sprint does not object to Bristol providing services as an ISP. Sprint also does not object to Bristol offering LAN-based PBX services to the City of Bristol government offices, Bristol Virginia City Schools, and the Bristol Virginia Utilities Board. Sprint, however, urges as a condition of any grant of interim authority that the Applicant be allowed only to continue existing service to these existing customers at existing locations under existing rates, terms, and conditions.

On August 30, 2002, Verizon Virginia Inc. and Verizon South Inc. (jointly, "Verizon") filed a response to the

Motion. Verizon asserts, among other things, that under Virginia law Bristol does not need any authority from the Commission, interim or otherwise, to serve or to continue to serve local government customers and to operate as an ISP. Verizon states that the cases cited by Bristol, where the Commission authorized companies to assume the customers and/or operate the assets of existing competitive local exchange carriers while their own certification applications were pending before the Commission, do not support Bristol's request because these customers and/or assets were being transferred from a previously certificated entity separate from the applicant.

Verizon explains that it is not asking the Commission to require Bristol to disconnect any services critical to its one unidentified commercial customer, if the customer does not have other, sufficient services in place from a certificated provider. Verizon asserts that any grant of interim authority to avoid harm to this customer should be carefully crafted to limit the authority to the specific services being provided to this customer only. Verizon contends that §§ 56-265.4:4 B 1 and B 4 of the Code include dictates that cannot be satisfied prior to considering the merits of Bristol's application. In addition, Verizon states that § 56-265.4:4 B 5 requires the Commission to promulgate rules necessary to implement such

subsection. Verizon requests that the Commission institute a rulemaking proceeding to adopt competitive safeguard rules prior to granting a certificate to any locality to operate as a local exchange carrier.

On September 6, 2002, Bristol filed a reply to the responses of Sprint and Verizon. Bristol states, among other things, that it began serving its commercial customer prior to March 1, 2002, and acted lawfully in relying on City of Bristol v. Earley, 145 F.Supp.2d 741 (W.D. Va 2001), in beginning the provision of telecommunications services. Bristol requests interim authority so that it can continue to serve its lawful customers, as well as any future customers that may desire service. Bristol asserts that nothing in its Application implies that it will resort to a subsidy to fund its business and that, to the contrary, it has continuously stated that it will not use a subsidy. Bristol explains that it plans to pay any amounts that it is required to pay and, likewise, it plans to take into account, by imputation or allocation, equivalent charges for all taxes, pole rentals, rights-of-way, licenses, and similar costs required to be paid or charged by for-profit providers. In addition, Bristol asserts that Virginia statutes do not require the Commission to adopt additional regulations, as requested by Verizon,

prior to the Applicant receiving interim authority or its certificate.

Bristol also states that its operation pursuant to interim authority will present no threat of irreparable harm to anyone, except to Bristol. Bristol continues to rely on cases where the Commission granted interim authority to a newly regulated entity to permit it to serve existing customers. Bristol asserts that its situation is similar to that of an entity that plans to acquire, either through merger, bankruptcy, or other forms of sale, the assets of an existing entity. Bristol states that, in such situations, the Commission's focus has been to strive for continued service to the existing customers by granting interim authority to those previously non-regulated acquiring entities. Bristol contends that its situation is analogous to Commission precedent because the imposition of regulatory oversight occurred while Bristol was in the middle of trying to launch a new business in accordance with current legal authority.

NOW UPON CONSIDERATION of the pleadings and the applicable law, the Commission finds as follows. We grant Bristol limited interim operating authority to serve its existing commercial customer, which it began serving prior to March 1, 2002. We do not place the limitations requested by Sprint on Bristol's service to this customer. We otherwise

deny interim operating authority. In addition, Bristol does not need authority from this Commission to operate as an ISP; Bristol also does not need our authority to serve certain governmental customers, including its current governmental customers listed in the Motion.<sup>1</sup>

Bristol began serving its one commercial customer prior to the imposition of the Virginia statute that requires the Applicant to obtain a certificate from this Commission. The limited interim operating authority that we grant today permits continued, undisrupted service to this customer. We do not, however, grant the Applicant interim operating authority to serve new customers prior to this Commission's statutorily required consideration of the merits of Bristol's Application.

Accordingly, IT IS HEREBY ORDERED THAT:

(1) Bristol shall have limited interim operating authority to provide service to its existing commercial customer, which it began serving prior to March 1, 2002. Bristol is otherwise denied interim operating authority.

(2) Bristol does not need authority from this Commission to operate as an internet service provider or to serve certain governmental customers including itself, the City of Bristol governmental offices, and Bristol Virginia City Schools.

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<sup>1</sup> See, e.g., Va. Code §§ 15.2-2109 C and 15.2-1500 B.



(3) Pursuant to Rule 5 VAC 5-20-120 of the Commission's Rules of Practice and Procedure, a Hearing Examiner is assigned to this case for the purpose of ruling on any discovery matters that may arise in this proceeding.

(4) This matter is continued.